

Charleston CLP 1336

Ratification  
Number 1996-113  
Elee

## AN AMENDED ORDINANCE

TO GRANT TO SOUTH CAROLINA ELECTRIC & GAS COMPANY OR ANY OF ITS WHOLLY OWNED SUBSIDIARIES AND ASSIGNS, THE RIGHT, POWER AND AUTHORITY TO ERECT AND TO INSTALL, MAINTAIN, AND OPERATE IN, OVER, UNDER AND UPON THE STREETS, ALLEYS, AND PUBLIC PLACES OF THE CITY ITS LINES, POLES, WIRES, GUYS, PUSH BRACES AND APPURTENANT FACILITIES, TOGETHER WITH ANY NECESSARY RIGHT OF ACCESS THERETO, FOR SUCH PERIOD AS THE SAME IS NEEDED BY THE COMPANY TO RENDER ELECTRIC SERVICE TO ITS CUSTOMERS IN THE CITY OF CHARLESTON, SOUTH CAROLINA; TO SET THE AMOUNT OF FRANCHISE FEES TO BE PAID BY SOUTH CAROLINA ELECTRIC & GAS COMPANY TO THE CITY OF CHARLESTON, SOUTH CAROLINA; TO LEVY FRANCHISE FEES ON THIRD PARTIES SELLING ELECTRICITY USING SCE&G'S ELECTRIC DISTRIBUTION OR TRANSMISSION SYSTEMS; AND TO ESTABLISH A FUND FOR NON-STANDARD SERVICE.

WHEREAS, South Carolina Electric & Gas Company or its predecessor entities and the City of Charleston have been parties to electrical and gas service Franchise Agreements for over one hundred (100) years, under the terms and conditions of which South Carolina Electric & Gas Company and its predecessors have furnished electrical and gas service to the City of Charleston and its residents; and

WHEREAS, in consideration of the City granting to the Company a Franchise Agreement for electric distribution which has a term of thirty (30) years, which includes provisions protecting the right of the Company to provide electric service throughout the City's present and future boundaries, the Company has agreed to make

July 15, 1996

-1-

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certain payments to the City of Charleston and convey the physical assets associated with public transportation service to the City of Charleston; and

WHEREAS, South Carolina Electric & Gas Company has agreed to make such payments and transfers all as more fully set forth in a Payment and Transfer Agreement dated concurrently herewith.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

#### Section 1

Wherever the word "Company" appears in this Ordinance, it is hereby to designate, and shall be held to refer to the South Carolina Electric & Gas Company, a corporation duly authorized and doing business pursuant to the laws of the State of South Carolina, and other subsidiaries, successors or assigns of SCANA Corporation.

#### Section 2

The right, power and authority is hereby granted and vested in the Company to conduct an electric business and to erect and to install, maintain, replace, and operate in, over, under, and upon the streets, alleys, bridges, rights-of-way and other public places of the City, its lines poles, wire, guys, push braces, communication facilities, underground wiring, and other appurtenant facilities, together with any necessary right of access thereto.

#### Section 3

Except for work done under a general permit referred to hereinafter, the Company shall, before entering upon any street, alley, bridge, right-of-way or other public place for the purpose

July 16, 1996

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of construction or installing any lines, poles, vaults, conduit or other apparatus of the utility system, notify the City Engineer, in writing or other acceptable means, of proposed construction or installation and shall, if the City Engineer so requires, file with the Department of Public Service, a sufficient plan and specification showing the nature and extent of the proposed construction or installation and such plan and specification shall be approved by the City Engineer before any such construction or installation shall be commenced.

Except for work done under a general permit referred to hereinafter, the Company agrees to comply with all utility encroachment permit requirements generally applicable to all applicants for utility encroachment permits, as may exist now, or in the future.

The City will issue to the Company, every five (5) years, a general permit for mutually agreed upon normal and recurring construction and installation projects and work. The conditions of such permit will not conflict with the conditions of this Ordinance.

No street, alley, bridge, right-of-way or other public place used by the Company shall be obstructed longer than necessary during its work of construction or repair, and shall be restored to the same good order and condition as when said work was commenced. No part of any street, alley, bridge, right-of-way, or other public place of the City, including any public drain, sewer, catch basin, water pipe, pavement or other public improvement, shall be injured

or damaged. However, should any such damage occur due to Company's construction activities in the right-of-way, the Company shall repair the same as promptly as possible, and, in default thereof, the City may make such repairs and charge the reasonable cost thereof to and collect the same from the Company. The Company shall hold the City harmless from all liability or damage (including judgement, decrees, attorney fees and court costs) resulting from its failure to use due care in the exercise of the privileges hereby granted or of its rights under this Section.

#### Section 4

The Company shall:

A. Construct and extend its electric distribution system within the present and/or extended City limits and shall supply standard electric service at standard voltages under rates and general terms and conditions as authorized by law.

B. Install underground electric distribution in all new residential subdivisions of the City under terms and conditions customarily applicable with respect to aid to construction payments.

C. Furnish, install, operate, and when called upon, expand, and maintain all of the street lighting system and service along the streets, highways, alleys and public places of the City, as said system may be hereafter installed and/or changed by order of the City, in accordance with the terms and provisions of this franchise. All materials furnished shall be of standard quality and kind, and the lamps shall be in conformity with the

requirements of this franchise and shall meet the requirements of good street lighting practice.

D. Properly maintain the street lighting system in a first-class condition.

E. Provide reliable street lighting service from dusk (one-half (1/2) hour after sunset) to dawn (one-half (1/2) hour before sunrise) each night during the franchise period, and for other times or occasions of abnormal darkness, the total number of hours per year to equal approximately four thousand (4,000) hours of lighting.

F. Make changes in the location of installed lamps and facilities covered by this franchise upon written order of the City, provided the City shall pay to the Company the actual cost of labor, material and other costs incurred in making such changes.

G. Render monthly bills to the City for the street lighting and electrical service furnished hereunder.

H. Maintain at its own expense a system for repairing or renewing the lamps in use. The Company, upon receiving official notice that there is a defective lamp, shall within five (5) days put the same in order, or replace same.

#### Section 5

The City shall:

A. Take all street lighting and other City electric service solely from the Company during the period covered by this franchise in all areas of the City, with the exception of those areas served

in whole or in part by other suppliers, in which areas the City may choose the supplier to provide service to the City.

B. Pay monthly, within twenty-five (25) days after receipt, a proper bill from the Company for the preceding months service in accordance with the amounts provided for in this franchise.

C. Accept the street lighting system as it exists on the effective date of this Ordinance.

D. Pay to the Company for street lighting service at the applicable rate schedule, and including payment for any service shared by the City and any third party, with the City being obligated to collect any reimbursement due from such third party, so that the City shall be solely responsible to the Company for full payment for such shared service.

E. Notify the Company in writing of areas annexed into the City and provide pertinent maps and tax map numbers so that newly annexed customers may be subject to franchise fees, such notification being a precondition to franchise fee payments on those accounts.

F. Within its construction permitting process, the City will use its best efforts to ensure that customers have provided adequate space on customers' premises for the electric service equipment of the Company as required, including space for pad mounted transformers where underground electric service is provided.

G. Within its permitting process, the City will use its best efforts to prevent scaffolding from being placed, or construction

July 16, 1996

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work to take place, within unsafe proximity of electrical lines of the Company. The Company agrees upon payment of reasonable expenses, to relocate, shield or deenergize lines.

Section 6

The City and the Company agree that:

A. All work performed within the municipal limits by the Company or its contractors shall be in accordance with the National Electric Safety Code as adopted by the South Carolina Public Service Commission.

B. The records of the Company pertaining to the street lighting system are to be accepted as full and final proof of the existence and configuration of the same, that system being hereinafter referred to as the "Street Lighting System".

C. Where non-standard lighting units are desired by the City, a non-standard lamp unit charge and specification shall be agreed upon which will apply to such lighting units and which thereafter shall become a part hereof.

D. Except as otherwise provided herein, the City shall have the right at any time to order the installation of new lamps.

E. The City shall have access at all reasonable times to all maps, records, and rates relating to the Street Lighting System in the City.

F. Throughout the life of the franchise the Company will supply to the City, and the City agrees that it will purchase from the Company, all electric energy required by the City for its own use including traffic signal lighting, lighting and power for

July 16, 1996

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public buildings, pumping stations, or other installations now owned or hereafter constructed or acquired by the City and for all other uses in all areas of the City, with the exception of electric power for facilities located in those areas served in whole or in part by other suppliers, where the City may choose the supplier to provide service.

G. The Company shall charge and the City shall pay to the Company monthly for all electric energy furnished by the Company under this franchise in accordance with rates and tariffs and terms and conditions as established by law.

H. None of the electric energy furnished hereunder shall be sold, disposed of, or exchanged by the City to others without the express written consent of the Company, other than in connection with the use or lease of a City facility on a short term basis.

I. The electric power hereunder is not guaranteed or warranted to be free from minor interruptions or from major outages beyond the control of the Company.

#### Section 7

A. The work of erecting poles and all work upon the streets and public places of said City shall be done under the general supervision of the City Engineer, and that all sidewalks or streets pavements or street surface which may be displaced by reason of such work shall be properly replaced and relaid by the Company, its successors and assigns, to the reasonable requirements of the City Engineer.

July 16, 1996

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B. The Company shall, before entering upon any street, alley, highway, bridge or other public place for the purpose of constructing any major transmission facilities, notify the City Engineer, and if the City so requires, file with the Department of Public Service, a sufficient plan and specification showing the nature and extent of the proposed transmission construction. Such plan and specifications shall be approved by the City Engineer before any construction or installation shall be commenced.

The City will issue to the Company, every five (5) years, a general permit for mutually agreed upon normal and recurring construction and installation projects and work. The conditions of such permit will not conflict with the conditions of this Ordinance.

#### Section 8

That the Company shall, as to all other conditions and elements of services not fixed herein, be and remain subject to the reasonable rules and regulations of the South Carolina Public Service Commission or its successors, applicable to electric service in the City.

#### Section 9

A. As payment for the right to provide electric service in each calendar year (excepting electric power to certain sections of Johns Island as aforesaid), the Company shall pay into the Treasury of the City those payments specified in the Payment and Transfer Agreement (in addition to the other consideration set forth therein) and, in addition, on or before the first day of

July 16, 1996

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March of each year, beginning with the year 1996, a sum of money equal to three (3%) percent of the gross sales revenue accruing to the Company from all residential and commercial sales of electricity during the preceding calendar year to residential and commercial customers within the corporate limits of the City, not including sales made under special sales programs for industrial customers which allow the Company to reduce prices to meet customers' competitive energy prices.

B. Annually, the Company shall certify to the City the gross retail electric revenues subject to franchise fees received within the Corporate limits of the City and the City shall verify that all annexations have been posted with the Company.

C. The City's right to receive franchise fees as provided for herein shall be in lieu of all occupation, license, excise and special franchise taxes, and shall be in full payment of all money demands, charges, or fees (including permit fees of any nature whatsoever imposed by the City related to any work done on Company's electrical system where the Company is signatory of the permit application and remains responsible for the work), except ad valorem taxes on property, and business license or franchise fees associated with any non-electrical operations, generally applicable user fees and charges, special improvement district fees or taxes and payments under the Payment and Transfer Agreement and the Environmental Agreement or other written contracts between the parties. The Company may at its option pay and deduct from its franchise fee payments any amount that shall be required or exacted

July 16, 1996

-10-

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from the Company for the benefit of the City other than ad valorem taxes on property and any amounts due under non-electricity franchise agreements and contracts.

D. It is expressly agreed that all franchise fees, or other payments imposed by the City on the Company, shall be collected from customers of the Company within the municipal boundaries.

E. The City hereby levies, and the Company may collect and transmit to the City, a franchise fee on all electricity sold by third parties to City customers using the Company lines or facilities within the City, said fee to be in all respects equivalent to the franchise fees established herein plus a proportional share of the other payments to the City or to the Fund (as hereinafter defined) which the Company is obligated to make on whatever basis during the life of this Agreement.

F. Should the City itself ever at any time construct, purchase, lease, acquire, own, hold or operate an electric distribution system, or franchise any other supplier to provide such service within the City, then the payment of percentages of gross sales revenue herein provided to be paid by the Company, its successors and assigns, and all payments required by the Payment and Transfer Agreement shall abate, cease and no longer be due, and shall forever thereafter be uncollectible, but this Agreement shall continue in full force and effect as to the right of the Company to provide electricity over and along City streets, alleys, bridges, rights-of-way, and other public places.

July 16, 1996

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Provided, however, that notwithstanding the above (i) the City may franchise Berkeley Electric Cooperative, Inc., to serve those areas in western Charleston County on Johns Island proper, or proximate thereto, (including that certain area north of the Town of Ravenel comprising all or part of Caw Caw Swamp, Cardin Bridge Swamp, and Drayton Swamp) to the extent that those areas have been previously designated as being assigned to Berkeley Electric Cooperative, Inc. on the Territorial Assignment maps issued pursuant to the South Carolina Territorial Assignment Act, provided however that the City may grant to Berkeley Electric Cooperative, Inc., a franchise which will provide for the sole right to serve electricity to the area on Johns Island proper and proximate thereto which consists of the area north of the Stono River and to the extent that those areas have been previously assigned to Berkeley Electric Cooperative, Inc. pursuant to the said South Carolina Territorial Assignment Act when the Company and Berkeley Electric Cooperative, Inc. reach a mutually acceptable agreement with respect to the Company's existing distribution line on Johns Island and (ii) the City may franchise the South Carolina Public Service Authority to serve on a customer choice basis that portion of the "Flag Creek Site" of approximately 236 acres, more or less, located in Berkeley County between Flag Creek and Clements Ferry Road which the South Carolina Public Service Authority presently is authorized to serve, as is shown on the attached Exhibit "A" as well as any areas contiguous to the "Flag Creek Site" of 236 acres, more or less, provided that the portion of the "Flag Creek Site" containing 236 acres, more or less, and such contiguous areas are

July 16, 1996

-12-

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owned by a single industrial user which has a single integrated plant extending beyond the boundaries of the approximately 236 acres, more or less, of the "Flag Creek Site," and (iii) the City may franchise the South Carolina Public Service Authority to serve any customer's premises not presently within the City of Charleston which the South Carolina Public Service Authority was actually serving prior to annexation of said premises if the City chooses to annex any such premises (iv) The City may franchise the South Carolina Public Service Authority to serve new customers in established residential neighborhoods or developed phases of existing subdivisions where the distribution facilities to serve those customers were installed prior to annexation by the City, (v) The City may franchise the South Carolina Public Service Authority to serve all existing customers, and new customers (on a customer choice basis) in any unannexed territory assigned by statute to SCPSC north of the municipal boundaries of the City as they exist on the date here of to the extent such territory may be annexed into the City in the future, (vi) The City may franchise the South Carolina Public Service Authority to serve that territory assigned to it by statute which is located to the east of South Carolina Highway #98 (Cainhoy Road) and to the south of South Carolina Highway #100 and to the west of the Wando River which territory the City may franchise solely to the South Carolina Public Service Authority if the City chooses to annex any such previously assigned territory, and (vii) the City may franchise Berkeley Electric Cooperative, Inc., to serve on a customer choice basis any areas presently within Berkeley County, to the extent that those areas were previously designated as being assigned to Berkeley Electric

July 16, 1996

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Cooperative, Inc., on the territorial assignment maps issued pursuant to the South Carolina Territorial Assignment Act.

#### Section 10

The City and the Company agree that:

A. In addition to the requirements of Section 4(B) above, the City shall have the right to require the Company to provide underground or other non-standard service including the use of special equipment or facilities in historical or scenic areas or the use of special landscaping or screening of facilities within the municipal limits of the City ("Non-Standard Service") to the extent that the cost of such Non-Standard Service can be defrayed by the fund provided for in this Section.

B. At the end of each year the Company and the City shall each designate a sum of money for a Non-Standard Service Fund (the "Fund"). The City payment to the Fund, which the Company shall deduct from the franchise fee payable by it to the City for the succeeding year, shall be equal to the increase, if any, in such franchise fee for the succeeding year over and above the franchise fee payable at April 1, 1994, but such City payment shall not exceed Three Hundred Fifty Thousand and No/100 (\$350,000.00) Dollars in any year (the "City Cap"). The Company shall not pay into the Fund, but shall become obligated to pay its designated amounts for each year (the "Company Obligation") and shall pay such amounts in accordance with paragraph D of this Section 10. The Company Obligation for each year shall be equal to the lesser of (i) Five Hundred Thousand and No/100 (\$500,000.00) Dollars or (ii) the sum of (A) the neighborhood payments (specified in C of this Section 10) for such year and (B) the City payments for such year, provided, however, the Company Obligation for any Non-Standard

July 16, 1996

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Service project shall not exceed fifty (50%) percent of the total cost of such Non-Standard Service project (collectively, the "Company Cap"). The City Cap of Three Hundred Fifty Thousand (\$350,000.00), and the Company Cap of Five Hundred Thousand (\$500,000.00) Dollars in any one year, shall be increased, each year, by the lesser of (i) three (3%) percent or (ii) the percentage increase in the aggregate electric service revenue of the Company in the franchise area for the preceding year.

C. An additional franchise fee payment to the Fund shall be made by the neighborhood or project to benefit from the Non-Standard Service. Such additional franchise payment shall be equal to a seven (7%) percent electric service additional franchise to all customers of the Company within the neighborhood or project up to an aggregate maximum amount equal to fifteen (15%) percent of the total cost for such Non-Standard Service project benefitting that area. The additional franchise fee shall be charged by and collected by the Company and deposited, as received, by the Company into the Fund and shall be used exclusively for projects within the neighborhood where the additional franchise fee is collected. The City shall designate any such neighborhood or project, including more than twenty-five (25) customers which are to receive a Non-Standard Service, a Special Franchise Fee District and City Council shall develop a plan to determine whether the project should be implemented in that District.

D. The amounts designated for the Fund shall be used exclusively to defray the reasonable and necessary costs of the planning, designing, permitting and constructing of utility projects involving Non-Standard Service including repair, replacement or relocation of existing utilities and drainage

systems. Said costs shall be deducted from the Fund, as incurred, in the following order of priority: (i) first, from the neighborhood or project payment, (ii) second, from the current City payment, (iii) third, from the balance, if any, in the Fund from previous years, and (iv) fourth, from any accrued or current Company Obligation. The Company shall be required to undertake Non-Standard Service projects within twelve (12) months of the approval of an underground wiring district by City Council only to the extent that amounts present or anticipated in the Fund are reasonably projected to be adequate to cover the costs of the Non-Standard Service projects as they are incurred, provided, however, that such projects shall be undertaken in advance of amounts being designated to the Fund so long as future revenues over the next successive ten (10) year period are reasonably projected by the Company to be adequate to cover any negative balances and associated finance and federal and state income tax charges, and to provide for a contingency balance of twenty-five (25%) percent. The Company shall administer the Fund.

E. The Company may elect to carry over from year to year, as an obligation of the Company, any portion of the designated payment required by it which is not actually drawn. All payments made from the neighborhood or project and by the City shall be held and administered by the Company in an interest bearing account. All interest earnings shall become a part of the account. At the termination of this Franchise Agreement, all amounts in the account (not including any accrued obligation of the Company, which shall terminate) not reasonably allocable to unfinished projects shall be paid to the City.



F. Any costs not actually paid from the Fund ("Reimbursable Costs") will be financed by the City, at its weighted average cost of long term capital, or if the City declines, by the Company, at its weighted average cost of long term capital plus associated federal and state income taxes. Reimbursable Costs (including finance charges and, if applicable, income taxes) shall be repaid from the Fund before any other Non-Standard Service is provided by the Company under this Agreement.

G. The City shall establish, in consultation with the Company, priorities for Non-Standard Service projects. The Company will carry projects to completion once commenced, subject only to the level of monies available from the Fund.

H. Within six (6) months of completion of any Non-Standard Service underground wiring project, the Company shall remove overhead facilities. The City shall require property owners to connect to underground facilities by ordinance adopted prior to the start of construction of such project.

I. The underground West Ashley Transmission Line is a Non-Standard Service under this Agreement. The Company will construct such Transmission Line after approval by the City of such construction, including plans, specifications, and location. The City will be responsible for obtaining all necessary rights-of-way. The City, from the City's portion of contribution to the Fund will pay the cost of additional non-standard improvement which City Council determines to be scientifically valid and cost-effective, when such additional improvements are required by any applicable law, rule or regulation of the City. There shall be no additional franchise fee payable for any West Ashley Transmission Line Non-Standard service. The differential between the cost of the

Transmission Line and what the cost of standard overhead wiring would have been will be recovered from the Fund by the Company, on a first priority basis over and above all other costs chargeable to the Fund, at the rate of One Hundred Thousand (\$100,000.00) Dollars per year for the fiscal years 1997, 1998, and 1999, and Two Hundred Fifty Thousand (\$250,000.00) Dollars for each year thereafter until fully recovered. A return will accrue to the Company with respect to any installment not recovered when due equal to its weighted average cost of long term capital plus associated federal and state income taxes.

J. At the request of the City, the Company agrees to finance, for residential customers connecting to an underground electrical line, the cost of such connection at interest rates and upon repayment terms acceptable to the Company.

#### Section 11

The electricity franchise granted by this ordinance, when accepted by the Company, shall constitute a contract between the City and the Company, and shall be in force and effect for the term of thirty (30) years, and shall continue in force and effect year-to-year thereafter until properly terminated by either party. Either party may terminate the contract at the end of its initial thirty (30) year term, or its anniversary date any year thereafter, by giving written notice of its intention to do so no less than five (5) years before the proposed date of termination.

#### Section 12

The franchise granted by this Ordinance is given upon the express understanding and provision that it is given subject to the constitution and laws of the State of South Carolina and of the United States of America.

July 16, 1996

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Section 13

This Ordinance shall not become effective until accepted in writing by the Company, which shall be within thirty (30) days from the date of its ratification by the City.

Section 14

The rights hereunder accrue exclusively to the parties, their successors and assigns. It is the express intent of the parties that this Agreement shall not create any rights in third parties.

Ratified in City Council this 16<sup>th</sup>  
day of July in the year of  
Our Lord, 1996, and in the Two  
Hundred Twenty First Year of the  
Independence of the United States of  
America.

[Signature]  
Mayor

ATTEST:

Vanessa I. Maybank  
Clerk of Council

ACCEPTANCE of the franchise granted by the within Ordinance  
acknowledged by SOUTH CAROLINA ELECTRIC & GAS COMPANY, this 7<sup>th</sup>  
day of August, 1996.

SOUTH CAROLINA ELECTRIC & GAS  
COMPANY (SEAL)

By: [Signature]

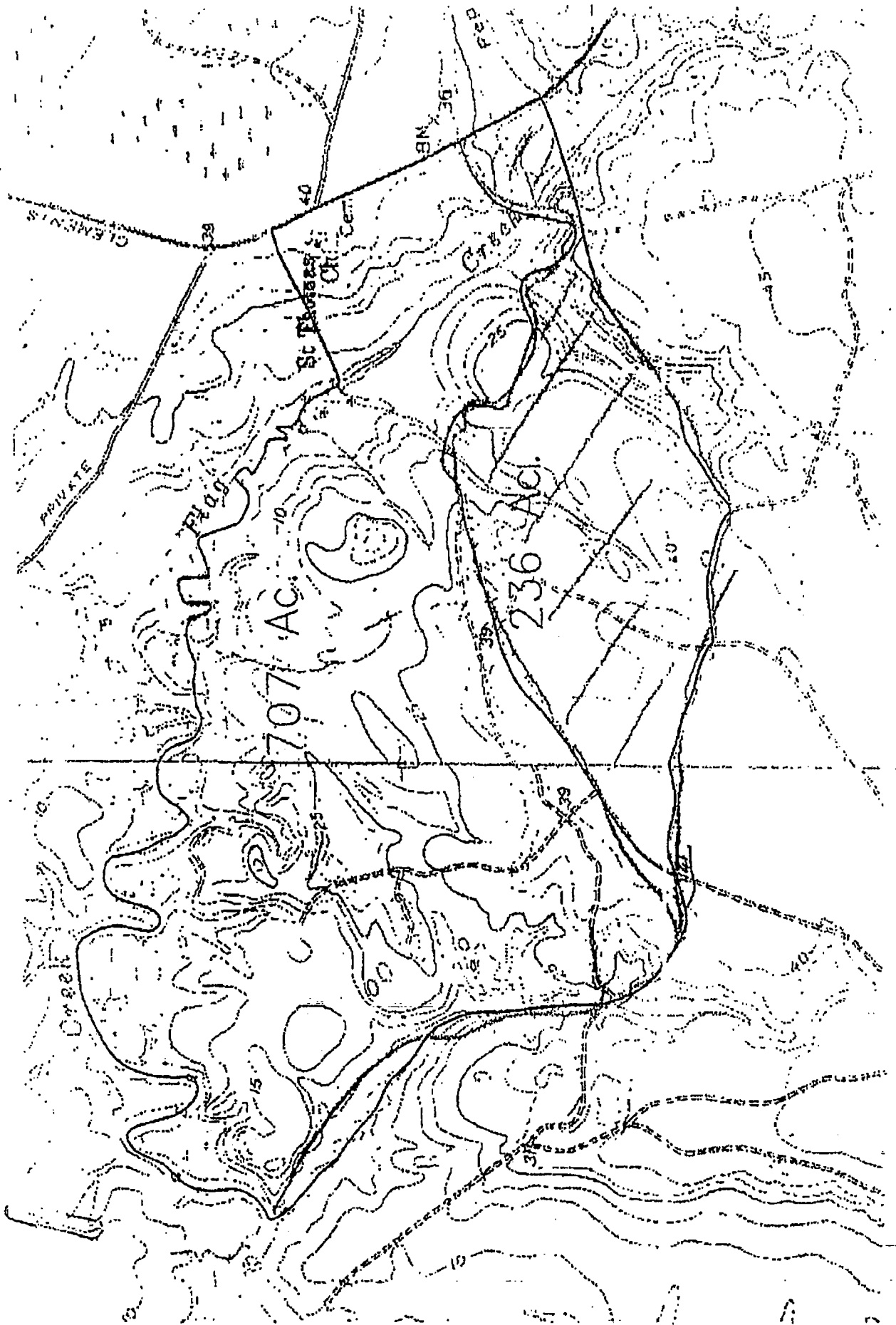
Its: Vice President

[Signature]  
CERTIFIED TO BE A TRUE COPY  
OF AN ORDINANCE RATIFIED

Vanessa I. Maybank  
VANESSA I. MAYBANK, CLERK OF COUNCIL

July 16, 1996  
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From : S.C. DUC



FLAG CREEK PROPERTY

"A Exhibit"

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CORPORATE RECORDS

Ratification  
 Number 1999-162



## AN ORDINANCE

TO AMEND ARTICLE VIII OF THE CODE OF THE CITY OF CHARLESTON TO CREATE A NEW SECTION 30-178 THEREIN WHICH SHALL PROVIDE FOR THE DESIGNATION OF UNDERGROUND UTILITY DISTRICTS FOR NON-STANDARD SERVICE; TO FURTHER PROVIDE THAT PAYMENT FOR THE INSTALLATION OF NON-STANDARD SERVICE IN UNDERGROUND UTILITY DISTRICTS SHALL BE DERIVED FROM THE NON-STANDARD SERVICE FUND MORE FULLY DESCRIBED IN THAT CERTAIN ORDINANCE NUMBER 1996-113 AND FROM UNDERGROUND UTILITY FEES PAID BY THE PROPERTY OWNERS WITHIN THE DISTRICTS PURSUANT TO SECTION 6-1-330, SOUTH CAROLINA CODE OF LAWS, AS AMENDED; TO REQUIRE THAT ALL OTHER ABOVEGROUND UTILITIES SHALL BE PLACED UNDERGROUND CONCURRENTLY WITH THE INSTALLATION OF UNDERGROUND UTILITIES WITHIN UNDERGROUND UTILITY DISTRICTS FOR NON-STANDARD SERVICE; AND TO AMEND ORDINANCE NUMBER 1996-113 TO PROVIDE FOR AN ALTERNATIVE METHOD OF FINANCING AND COLLECTING THE 15% NEIGHBORHOOD PAYMENTS TO THE NON-STANDARD SERVICE FUND AND CONNECTION TO THE NON-STANDARD SERVICE FACILITIES AND EQUIPMENT. (As amended)

INCIDENT TO THE ADOPTION OF THIS ORDINANCE, CITY COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT:

1. City Council has long been mindful of the desirability of providing for the gradual removal of overhead wires and poles from its streets in order to promote the health, safety and general welfare of its citizens and visitors by reducing hazards to pedestrians and traffic, as evidenced by the ratification of Ordinance Number 1969-2 on January 14, 1969.

2. As further evidence of City Council's desire to provide for the gradual removal of overhead wires and poles from its streets, City Council ratified Ordinance Number 1996-113 on July 16, 1996 (hereinafter referred to as the "Ordinance"), which granted to South Carolina Electric & Gas Company (hereinafter referred to as the "Company") the right, power and authority to

provide electric service to its customers in the City of Charleston (hereinafter referred to as the "City") for a period of 30 years from the effective date of the Ordinance (hereinafter referred to as the "Term").

3. In Section 10.A. of the Ordinance, the City has the right to require the Company to provide underground or other non-standard service including the use of special equipment or facilities in historical or scenic areas or the use of special landscaping or screening of facilities within the municipal limits of the City (hereinafter referred to as "Non-Standard Service").

4. Section 10.B of the Ordinance provides that the City and the Company shall establish a Non-Standard Service Fund (hereinafter referred to as the "Fund") which shall be used to defray the costs of the Non-Standard Service. The City's contribution to the Fund shall be up to \$350,000 per year and shall be deducted by the Company from the franchise fee payable by it to the City during the Term and deposited into the Fund. The Company shall contribute up to \$500,000 per year into the Fund during the Term.

5. Section 10.C of the Ordinance provides that neighborhoods that benefit from the Non-Standard Service different from the general public not paying for the service shall pay into the Fund an amount equal to 15% of the total cost for such Non-Standard Service.

6. Section 10.C. further provides that the City shall designate any such neighborhood or project as an Underground Utility District for Non-Standard Service (hereinafter referred to as "District") and City Council shall develop a procedure to determine whether Non-Standard Service should be implemented in that District.

7. Section 10.D of the Ordinance provides that the amounts paid into the Fund by the City, the Company and the neighborhoods benefiting from the Non-Standard Service shall be used exclusively to defray the reasonable and necessary cost of the planning, designing, engineering, permitting and constructing of utility projects involving Non-Standard Service.

8. Section 10.D of the Ordinance further provides that the Company shall be required to undertake Non-Standard Service projects within 12 months of the approval of the District by City Council only to the extent that amounts present or anticipated in the Fund are reasonably projected to be adequate to cover the costs of the Non-Standard Service projects as they are incurred, provided, however, that such projects shall be undertaken in advance of amounts being designated to the Fund so long as future revenues to the Fund over the next successive 10 year period are reasonably projected by the Company to be adequate to cover any negative balances and associated finance and federal and state income tax charges, and to provide for a contingency of 25% in the Fund.

9. Section 10.G of the Ordinance provides that the City shall establish, in consultation with the Company, priorities for Non-Standard Service projects. The Company shall carry such projects to completion once commenced, subject only to the level of monies available from the Fund as provided in paragraph 8 above and the Company's ability to construct more than one District at a time.

10. In furtherance of Section 10.G of the Ordinance, City Council is minded to establish a procedure by which Non-Standard Service projects are prioritized and a procedure by which a neighborhood shall be designated as a District.

11. City Council finds that, in addition to promoting the health, safety and general welfare of its citizens and visitors by reducing hazards to pedestrians and traffic, the placement of utilities underground within a District benefits the property owners therein and enhances the safety of utility service, creates a more aesthetically pleasing neighborhood in which to live and increases property values.

12. City Council recognizes that Section 10.C of the Ordinance provides for the collection of an additional franchise fee payment of seven percent (7%) on electric service from all customers within the District until an amount equal to 15% of the total cost of the Non-Standard Service has been collected. However, City Council finds that a more equitable method of defraying the cost of Non-Standard Service is provided for in Section 6-1-330, South Carolina Code of Laws, as amended, which permits charging and collecting an Underground Utility Fee from the owners of each parcel of property within a District.

13. City Council further finds that, in order to further promote the health, safety and general welfare of its citizens and visitors by the reduction of hazards to pedestrians and traffic, it is desirable to provide for the elimination of all overhead wires, poles and equipment from the streets within a District and to require that same be placed underground concurrently with the installation of Non-Standard Service facilities and equipment within a District by the Company, except such poles as are necessary to support street lighting, traffic signals and transmission lines above forty-three thousand (43,000) volts.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CHARLESTON, SOUTH CAROLINA:

SECTION 1: City Council confirms all of the findings of fact contained in the recitals of this Ordinance.

SECTION 2: Article VIII of the Code of the City of Charleston is hereby amended by creating a new Section 30-172 therein, which shall read as follows:

Section 30-172.

A. City Council shall from time by ordinance designate Underground Utility Districts for Non-Standard Service within the City of Charleston.

B. Prior to an area of the City being designated as an Underground Utility District for Non-Standard Service (hereinafter referred to as "District"), a written Petition, signed by sixty-six and two-thirds ( $66 \frac{2}{3}\%$ ) percent or more in number of the owners, as hereinafter defined, owning at least sixty-six and two-thirds ( $66 \frac{2}{3}\%$ ) percent of the assessed value of the real property in the area requesting the Non-Standard Service, including those property owners that are exempt from ad valorem taxation as provided by law, shall be submitted to City Council to request Non-Standard Service within said area. The Petition shall describe the area in which the Non-Standard Service is being requested (hereinafter referred to as the "Proposed District"), and shall include a list of all property owners therein, identified as either exempt or non-exempt from ad valorem taxation as provided by law, the property addresses, mailing addresses of the property owners within the proposed District if they receive mail at a different address and the tax map numbers assigned to each parcel of property in the Proposed District. The Petition shall further provide that the responsibility of securing the necessary easements within the Proposed District that shall be necessary to support the aboveground and underground facilities and equipment for the Non-Standard Service shall be borne by the property owners within the Proposed District at no cost to the City or the Company.

C. For purposes of this Ordinance, an owner shall be defined as any person eighteen years of age, or older, or the proper legal representative for any person younger than eighteen years of age, and any firm or corporation, who or which owns legal title to a present possessory interest in real estate equal to a life estate or greater (expressly excluding leaseholds, easements, equitable interests, inchoate rights, dower rights and future interests) and who or which owns, at the date of the Petition, at least an undivided one-tenth interest in a single parcel of real estate and whose name appears on the county tax records as an owner of real estate.

D. Upon receipt and approval of the Petition as provided in paragraph B above, the City shall submit the Petition to the Company for the purpose of undertaking the planning, designing, engineering and cost estimating for the Non-Standard Service project. Upon the completion of the planning, designing, engineering and cost estimating for the Non-Standard Service project in the Proposed District, the Company shall submit to the City its plans and cost estimate for the project, the easement locations for the aboveground and underground facilities and equipment for Non-Standard Service and the cost associated with each parcel within the Proposed District connecting to the Non-Standard Service facilities and equipment (hereinafter referred to as the "Plans"). The City, upon completion of its review, shall submit the Plans and the estimated



amount of the annual Underground Utility Fee to the property owners within the Proposed District.

E. Prior to the City designating a Proposed District as a District, the City shall receive a second Petition signed by sixty-six and two-thirds (66 2/3%) percent or more of the owners owning at least sixty-six and two-thirds (66 2/3%) percent of the assessed value of the real property within the Proposed District. The Petition shall provide that the property owners agree to the Plans, agree to pay the cost to connect to the underground facilities and equipment upon completion of construction of the project and agree to be responsible for fifteen (15%) of the total cost of the Non-Standard Service project by the payment of the Underground Utility Fee. The Petition shall include all necessary easements from the property owners on whose land the aboveground and underground Non-Standard Service facilities and equipment shall be placed.

F. Upon receipt of the second Petition as provided in paragraph E above, the City shall, by ordinance, designate the area described in the Petition as a District.

G. The City shall establish a priority list for Districts (hereinafter referred to as the "Priority List"). A District shall be added to the Priority List once the requirements contained in paragraphs A through F above have been met. The Company shall be required to commence construction of Non-Standard Service projects within a District within 12 months of it being placed on the Priority List, subject to the Company's ability to construct more than one District at a time and subject to the amounts present or anticipated in the Fund that are reasonably projected to be adequate to cover the costs of the Non-Standard Service projects as they are incurred. Such projects shall be undertaken in advance of amounts being designated to the Fund, however, so long as future revenues to the Fund over the next successive 10 year period are reasonably projected by the Company to be adequate to cover any negative balances and associated finance and federal and state income tax charges, and to provide for a contingency balance of 25% in the Fund. Once commenced, the Company shall carry Underground Utility District Non-Standard Service projects to completion.

H. After a District has been designated and prior to commencement of construction, the City shall authorize the collection of an Underground Utility Fee from the property owners of each parcel within the District by ordinance pursuant to Section 6-1-330, South Carolina Code of Laws, as amended. The Underground Utility Fee shall be based on assessed value and shall be collected by the City or its agent on an annual basis and deposited into the Fund until 15% of the total cost of the Non-Standard Service within the District is collected.

I. When any street or portion thereof within the City of Charleston is designated as a District, any person, firm, company or corporation owning or maintaining overhead wires or equipment, associated overhead structures or poles

serving the same in such street or portion thereof shall remove such wires and equipment, associated structures and poles prior to or concurrently with the underground placement of Non-Standard Service utilities in the District and shall install same underground concurrently with the underground placement of Non-Standard Service utilities in the District, with the exception of such poles as are necessary to support street lighting, traffic signals and transmission lines above forty-three thousand (43,000) volts.


SECTION 3: Ordinance Number 1996-113 is amended by adding new sections thereto that provide for an alternative method of financing and collecting the 15% neighborhood payments to the Non-Standard Service Fund by assessing the owners of each parcel of property within a District and to further provide for the connection to Non-Standard Service by the property owners within a District upon the designation of a District by City Council as follows:

- A. In lieu of the method contained in Section 10.C of the Ordinance for funding the neighborhood contribution of 15% of the total cost of a Non-Standard Service project, the City, at its option, may elect the following alternative funding mechanism: After a Non-Standard Service project or an Underground Utility District for Non-Standard Service project has been designated and prior to commencement of construction, the City shall, by ordinance pursuant to Section 6-1-330, South Carolina Code of Laws, as amended, authorize the collection of an Underground Utility Fee from the property owners of each parcel within the District. The Underground Utility Fee shall be based on assessed value and shall be collected by the City or its agent on an annual basis, not to exceed ten (10) years, and deposited into the Fund until 15% of the total cost of the Non-Standard Service within the District is collected.
- B. After a District has been designated but prior to commencement of construction, the City shall, by ordinance, require all property owners within the District to connect, at the expense of the property owner, to the underground facilities and equipment upon completion of construction. Each property owner shall have the option of paying for the connection at the time it is made, or paying a portion of the total cost of such connection each year until paid in full, together with any carrying costs on the unpaid balance, in addition to the assessment pursuant to Section 3.A. above.

SECTION 4: This Ordinance shall become effective upon ratification with the exception of Section 3 herein, which shall not become effective until accepted in writing by the Company, which shall be within thirty (30) days from the date of the ratification of this Ordinance by the City and with the exception of Section 2, paragraph I herein, which shall become effective on January 1, 2000.

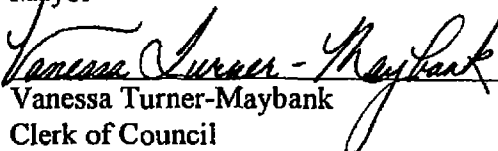
Ratified in City Council this 16<sup>th</sup> day of ~~October~~ November, in the year of Our Lord, 1999 and in the 224<sup>th</sup> year of the Independence of the United States of America.

(SEAL)



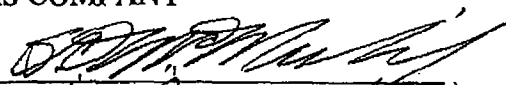
Joseph P. Riley, Jr.  
Mayor

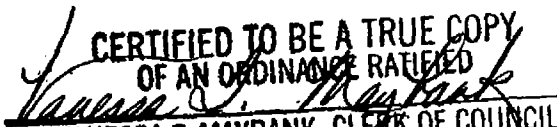
ATTEST:

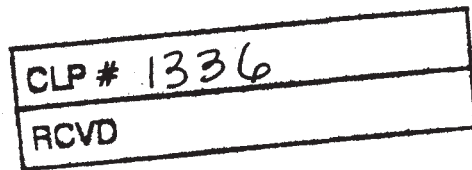
  
Vanessa Turner-Maybank  
Clerk of Council

ACCEPTANCE of the Section 3 herein is acknowledged by SOUTH CAROLINA ELECTRIC & GAS COMPANY, this 16<sup>th</sup> day of November, 1999.

SOUTH CAROLINA ELECTRIC  
& GAS COMPANY

By:   
Its: Vice President

  
CERTIFIED TO BE A TRUE COPY  
OF AN ORDINANCE RATIFIED  
VANESSA T. MAYBANK, CLERK OF COUNCIL



**CITY OF CHARLESTON**

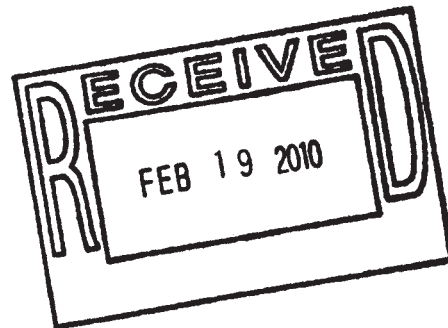
**ELECTRIC FRANCHISE AMENDMENT TO SECTION 9A CHANGING THE FEE FROM 3% TO 5%.**

**RATIFIED BY CHARLESTON CITY COUNCIL: DECEMBER 15, 2009**

**ACKNOWLEDGED BY SOUTH CAROLINA ELECTRIC & GAS COMPANY: FEBRUARY 15, 2010**

**COMPANY'S COPY**

**Corporate Secretary/CLP**





Ratification  
Number 2009-253

# AN ORDINANCE

TO AMEND ORDINANCE NUMBER 1996-113 TO INCREASE THE PAYMENTS FROM SOUTH CAROLINA ELECTRIC & GAS (THE "COMPANY") TO THE CITY MORE FULLY SET FORTH IN SECTION 9(A) OF SUCH ORDINANCE. **(AS AMENDED)**

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. Ordinance Number 1996-113 is hereby amended by deleting Section 9(A) in its entirety and substituting in its place and stead the following Section 9(A), which shall read as follows:


"As payment for the right to provide electric service in each calendar year (excepting electric power to certain sections of Johns Island as aforesaid), the Company shall pay into the Treasury of the City on or before the first day of March of each year, beginning with the year 2010, a sum of money equal to five (5%) percent of the gross sales revenue accruing to the Company from all residential and commercial sales of electricity during the preceding calendar year to residential and commercial customers within the corporate limits of the City, not including sales made under special sales programs for industrial customers which allow the Company to reduce prices to meet customers' competitive energy prices."

Section 2. In all other respects, Ordinance 1996-113 shall remain unchanged and in full force and effect.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this 15<sup>th</sup> day of December in the Year of Our Lord, 2009, In the 234<sup>th</sup> Year of the Independence of the United States of America.

By:

  
Joseph P. Riley, Jr.  
Mayor

Attest:

  
Vanessa Turner-Maybank  
Clerk of Council

Acceptance of the amendment to Section 9A of the Franchise herein is acknowledged by  
SOUTH CAROLINA ELECTRIC & GAS COMPANY, this 16<sup>th</sup> day of February, 2010.

SOUTH CAROLINA ELECTRIC & GAS COMPANY

By: 

Kevin B. Marsh

Its: President

ATTEST: 

Gina S. Champion

Its: Corporate Secretary

